

## **REMARKS**

Claims 1-5 and 10-12 were rejected, and remain pending in the instant application. No claims are amended or added. Reconsideration of the rejections is respectfully requested.

### **Preliminary Remarks**

Applicants thank the Examiner for withdrawing the objections and the claim rejections under 35 USC § 112.

### **Claim Rejections – 35 USC § 103**

Claims 1-5 and 10-12 were rejected under 35 USC § 103(a) as allegedly being unpatentable over US Patent No. 6,820,259 issued to Kawamata *et al.* (hereinafter “Kawamata”), in view of US Publication No. 2003/0022657 issued to Herschberg *et al.* (hereinafter “Herschberg”).

Properly viewed as a whole, claim 1 recites at least in part, a wireless computing apparatus that is equipped to receive, with mandatory updates, an update catalogue comprising available discretionary updates. The wireless computing apparatus is equipped to “**determine** that a first group of the available discretionary updates” [of the received update catalog] “is relevant to the wireless computing apparatus, and that a second group of the available discretionary updates” [of the received update catalog] “is irrelevant to the wireless computing apparatus” and to “depict representations of the available discretionary updates of the first group in a selectable manner to enable user control over installation . . . .”

The cited combination of Kawamata and Herschberg fails to teach or suggest at least this feature of claim 1.

As conceded on page 3 of the Final Office Action, Kawamata fails to disclose the “determine” and “depict” recitations of claim 1. Herschberg was cited as allegedly providing the missing teaching. However, a close reading of Herschberg shows Herschberg teaches away from the “determine” recitation of claim 1. Herschberg teaches a provisioning system in which the user’s device 106 receives from a server/administrator a list of all applications with permission settings of “grant” ***that are compatible with the user’s device 106 and not***

*currently resident on that device* (paragraph [0180]). On page 14 of the Final Office Action, the Examiner asserted that “Relevant available updates (i.e., non-mandatory) has two requirements which are ‘have not already been installed on the device’ and ‘client device has a use (e.g., applicable’). . . .” Assuming, hypothetically and *arguendo*, that the Examiner’s interpretation of the term “relevant available updates” is correct (Applicants do not concede this), it logically follows that the list of non-mandatory applications received by the user’s device of Herschberg includes *only relevant available updates*. All applications on the list are optional, and the server/administrator has pre-determined that they are not currently resident on the device and are compatible with the user’s device.

Therefore, Herschberg **teaches away** from a “*wireless computing apparatus*” having “a memory comprising computer executable instructions . . . to cause *the wireless computing apparatus to . . . determine* that a first group of the available discretionary updates” [of the received update catalog] “is relevant to the wireless computing apparatus, and that a second group of the available discretionary updates” [of the received update catalog] “is *irrelevant* to the wireless computing apparatus.”

Additionally, Applicants note that the disclosure of Kawamata is directed to systems and methods for *automatically* updating software (i.e., without user action; *see e.g.*, col. 1, lines 24-52). A person having ordinary skill in the art would lack motivation to modify the automatic software distribution system of Kawamata in the suggested manner (*i.e.*, to enable user control over installation of discretionary updates), because the automation of the update process and resulting ease of device use is the focus of Kawamata’s invention, which would be undermined by the suggested combination.

For at least the above reasons, the combined references fail to teach or suggest the recitations of claim 1. Therefore, claim 1 is allowable over the cited references under § 103(a).

Claim 10 recites subject matter substantially similar to that of claim 1, and is therefore allowable over the cited combination for at least the same reasons.

Claims 2-5 and 11-12 depend from claims 1 and 10, respectively, incorporating their recitations, and are thus allowable over the cited references for at least the same reasons.

Claims 2-5 and 11-12 are further allowable over the cited references for their additional recitations (below), which are not taught or suggested by the cited references:

- Claim 2: “the computer executable instructions further operative, upon execution, to cause the wireless computing apparatus to select a desired discretionary update from said first group; and to obtain said desired discretionary update.”
- Claim 3: “the computer executable instructions further operative, upon execution, to cause the wireless computing apparatus to install said obtained discretionary update.”
- Claim 4: “wherein said second group comprises an available discretionary update currently installed on the wireless computing apparatus.”
- Claim 5: “wherein said second group comprises an available discretionary update inapplicable to software currently installed on the wireless computing apparatus.”
- Claim 11: “wherein said determining comprises comparing, by the wireless mobile device, the update catalog to the software currently installed on the wireless mobile device, wherein the software is at least one of an operating system or an application.”
- Claim 12: “wherein said determining comprises comparing, by the wireless mobile device, the update catalog to software currently installed on the wireless mobile device, wherein the software is at least one of an operating system or an application.”

## **CONCLUSION**

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1569.

No extensions of time are believed to be required. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,  
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